UNITED STATES DISTRICT COURT

DISTRICT OF NEW JERSEY

LINDA JONES, individually and on behalf of all others similarly situated,

Plaintiff(s),

vs.

ORANGE HOUSING AUTHORITY; and GERARD LARDIERE in his capacity as Executive Director of the Orange Housing Authority; ABRAHAM GNESSIN, and L & A PROPERTIES,

Defendants.

PLAINTIFFS' MEMORANDUM IN SUPPORT OF MOTION FOR A TEMPORARY RESTRAINING AND A PRELIMINARY INJUNCTION

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I. INTRODUCTION

In determining whether or not to grant a temporary restraining order, the Court must consider four factors:

(1) whether the moving party has made a strong showing that they will prevail on the merits; 2) whether the moving party will be irreparable injured absent the relief; 3) whether the grant of a preliminary injunction would substantially harm other interested parties; and 4) the public interest. Middlewest Motor Freight Bureau v. United States, 433F.2d 212, (8th Cir. 1970), Virginia Petroleum Jobbers Association v. United States, 259F.2d 921, (D.C.Cir. 1958), Ann Arbor Railroad Co. v. United States, 358F Supp. 933, (E.D. Pa. 1973), Palmigiano v. Travisano 317F. Supp 766, (D.R.I. 1970).

The determination of a motion for a preliminary injunction involves a consideration and balancing of the same factors. A. O. Smith Corporation v. Federal Trade Commission, 530 F. 2d 515(3rd Cir. 1976) and cases cited therein at 525; Commonwealth ex rel. Creamer v. United States Department of Agriculture, 469F.2d 1387 (3rd Cir. 1972), Note 1 at 1388; In Re Penn Central Transportation Co., 457F.2d 281 (3rd Cir. 1972).

In the present case, the merits of plaintiff's claims are clearly established under federal and state law. Without immediate relief, plaintiff and her son will be irreparably harmed. Conversely, the defendants face no injury from a grant of preliminary relief. Finally, the public interest would be served in insuring that the federal program of subsidized housing for low-income tenants protects eligible tenants from arbitrary eviction.

STATEMENT OF FACTS

Linda Jones resides at 661 Lincoln Avenue, Orange, New Jersey with her twelve year old son. From December 1, 1981 to November 30, 1982 she was a tenant of L & A Properties pursuant to a Section 8 Existing Housing Program lease.

In order to participate in the Section 8 program, defendant L & A Properties, through defendant Gnessin, entered a Housing Assistance Payments Contract with the Orange Housing Authority (OHA) and a lease with plaintiff Jones. Under the terms of these agreements, the OHA subsidized plaintiff's monthly rent. Plaintiff paid the landlord $109.57 and the OHA paid $209.00, making a total monthly rent of $318.57.

On October 5, 1982 defendant Gnessin and plaintiff signed a Section 8 Unit Inspection Report approving the conditions of plaintiff's apartment as required for continued participation in the program. The OHA then inspected and approved the conditions of plaintiff's apartment. On October 7, 1982, defendant Gnessin and plaintiff signed an agreement requesting that the OHA renew plaintiff's lease. That agreement stated:

> The undersigned Owner (Lessor) and Family (Lessee) hereby request the Orange Housing Authority to approve the lease for the dwelling unit located at 661 Lincoln Avenue - Apt 307 for a term of twelve months beginning December 1, 1982.

As of the date of that agreement, the defendant landlord was apparently satisfied with plaintiff as a tenant.

On or about October 19th, Ms. Jones wrote a letter to defendant Gnessin complaining about lack of heat in her apartment. She sent a copy of this letter to the Orange Housing Code Enforcement Office. Approximately eight days later, on October 27th, defendant Gnessin wrote to plaintiff Jones informing her that he no longer intended to renew her Section 8 lease. Defendants did not inform plaintiff of any reason for refusing to renew her lease. Without her Section 8 lease and rent subsidy, plaintiff will be unable to pay her rent and will face eviction.

II. ARGUMENT

POINT I

PLAINTIFF WILL SUCCEED ON THE MERITS

A. Defendants Terminated Plaintiff's Tenancy In Violation of 42 U.S.C. § 1437f(d)(1)(B).

The United States Housing Act of 1937, as amended, 42 U.S.C. §1437f(d)(1)(B) provides:

> (B)(ii) (T)he owner shall not terminate the tenancy except for serious or repeated violation of the terms and conditions of the lease, for violation of applicable federal, state or local law, or for other good cause. (emphasis supplied)

In Swann v. Gastonia Housing Authority, 675F.2d 1342 (4th Cir. 1982), the Court held that a landlord in the Section 8 Existing Housing Program must renew a lease unless there is good cause to refuse to renew it.* The District Court in Swann stated:

> The purpose of the Act would be frustrated if a landlord were allowed to participate in and take advantage of the economic security provided to landlords under the Act, and yet the tenant were stripped of any reciprocal security by being vulnerable to eviction without good cause at the expiration of the lease term. Congress could not have intended such unfairness and insecurity in an area as critical for low-income families as is basic housing. 502F. Supp. 362, 365 (W.D.N. Car. 1980)

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* In Swann, the Court implied a requirement of good cause in the prior version of the statute which provided:

> The agency shall have the sole right to give notice to vacate with the owner having the right to make representation to the agency for termination of tenancy." 42 U.S.C. §1437f(d)(1)(B)(1978).

(Footnote continued on next page)

See also, Jeffries v. Georgia Residential Finance Authority, 678F.2d 919 (11th Cir. 1982), (requiring good cause for midterm termination of a lease).

In the instant case, the defendants did not have good cause to refuse to renew plaintiff's lease. It is clear that plaintiff had not engaged in "serious or repeated violation of the terms and conditions of the lease," or "violation of applicable federal, state or local law." The facts demonstrate that defendants were satisfied with plaintiff as a tenant and agreed to renew her lease as late as October 7, 1982. It was only after plaintiff exercised her right to complain about the conditions in her apartment to the landlord and local housing code officials that defendants decided not to renew her lease. This is not good cause justifying defendants' refusal to renew plaintiff's lease.

B. 24 C.F.R. §882.215 [47 Fed. Reg. 33497 (Aug. 3, 1982)] Does Not Authorize The Non-Renewal Of A Lease Absent Good Cause.

In refusing to renew plaintiff's lease without good cause, defendants are apparently relying on an Interim Regulation recently promulgated by the Department of Housing and Urban Development, HUD. That regulation which went into effect September 21, 1982 provides:

(Continuation of Footnote)

* Subsequent to the District Court's decision in Swann, 42 U.S.C. §1437f(d)(1)(B) was amended to make explicit the good cause requirement. Thus, the Swann Court went even further than plaintiff is asking this Court to go. Plaintiff is only requesting that this Court enforce what the current statute requires.

> The Contract and the Assisted Lease shall provide with respect to the unit that the Owner shall neither (i) terminate the tenancy during the term of the Contract and Assisted Lease, nor (ii) refuse to enter into a new Contract with respect the unit, unless the owner decides not to enter into a new Contract with respect to the unit, except for:
> (1) Serious or repeated violation of the terms and conditions of the Lease;
> (2) Violation of applicable Federal, State or local law; or
> (3) Other good cause. 24 C.F.R. §882.215(b)[47 Fed. Reg. 33497 (Aug. 3, 1982)]. (emphasis added).

Defendants may contend that the underlined language above would appear to authorize non-renewal of a lease for any reason, even absent good cause, if the landlord decides to withdraw the unit from the Section 8 program.

This construction would be inconsistent with 42 U.S.C. § 1437f(d)(1)(B)* and with the legislative history to that statute. The legislative history provides:

> It is not the intention of the conferees that these statutory provisions govern the relationship between a landlord and a tenant after a landlord has, in good faith, terminated his participation in the Section 8 existing program. Conference Report on the Omnibus Budget Reconciliation Act of 1981, H.R. 3982, Rep. No. 97-208, p. 695. (emphasis added)

This comment is particulary significant since HUD has used it to justify its interim regulation. 47 Fed. Reg. at 33499. The legis-

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* See p. 4, supra.

lative history demonstrates that the regulation should properly be construed to allow the non-renewal of a lease only when a landlord is withdrawing all of his apartments from the Section 8 program for good faith reasons. Thus, a landlord who continues to participate in the Section 8 program, whether through the same unit or other units, must renew a lease in the absence of good cause. Similarly a landlord may not refuse to renew a lease where he is leaving the program in bad faith, for example because the tenant has made complaints about the apartment. The facts, as noted, demonstrate that there was no good faith in this case. Moreover, the landlord continues to benefit from the Section 8 program through other units.

To construe the regulation otherwise would be inconsistent with 42 U.S.C. §1437 f(d)(1)(B) for it would allow non renewal of a lease absent good cause. It is axiomatic that a regulation which exceeds the statute that purportedly authorizes it, is invalid. Ernest and Earnest vs. Hochfelder, 42 U.S. 185, 213-14 (1976); Dixon v. U.S., 381 U.S. 68, 74 (1965); Manhattan General Equipment Co. v. Commissioner, 297 U.S. 129, 134 (1936).

Finally, the regulation is invalid since it was promulgated without a sufficient notice and public comment period in violation of the Administrative Procedure Act and HUD's own regulations. See, 5 U.S.C. §553(b)(3) and (c) and 24 C.F.R. §§10.1 and 10.16.

C. Defendants Refusal To Renew Plaintiff's Lease Violates N.J.S.A. 2A:18.61.3

In New Jersey, the good cause requirement for nonrenewal of a lease exists not only by virtue of federal law but under state law as well. N.J.S.A. 2A:18-61.3 (Supp. 1981) prohibits a landlord from evicting a tenant or refusing to renew a tenant's lease except for good cause as defined in N.J.S.A. 2A:18-61.1 (Supp. 1981).* In the instant case there was no ground under the state statute, nor was any alleged, for the defendant landlord's refusal to renew plaintiff's lease when it terminated on November 30, 1981. Thus, defendants' actions violate N.J.S.A. 2A:18-

D. Defendants Violated Plaintiff's Rights Under N.J.S.A. 2A:42-10.10 et. seq.

N.J.S.A. 2A:42-10.10 prohibits a landlord from terminating a tenancy because of a tenant's: 1) attempt to enforce or secure any rights under the lease or contract, or under state or federal law, or 2) good faith complaint to a governmental authority about alleged violations of any health or safety law or regulation.

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* N.J.S.A. 2A:18-61.3 provides:

> No landlord may evict or fail to renew any lease of any premises covered by Section 2 of this act except for good cause as defined in Section 2. (emphasis added)

N.J.S.A. 2A:18-61.1 is attached as Exhibit A

In this case, defendants agreed to enter a new lease with plaintiff during the first week of October. However, after plaintiff complained about lack of heat in her apartment to the landlord and the Orange Housing Code Enforcement Department, the landlord changed his mind. Immediately after receiving plaintiff's complaint, defendant Gnessin notified plaintiff that he no longer intended to renew her lease. This created a rebuttable presumption that defendants' refusal to renew plaintiff's lease was a reprisal against plaintiff for both attempting to enforce her rights and complaining to a governmental authority. N.J.S.A. 2A:42-10.12.

E. Defendants L & A Properties and Gnessin Have Breached An Express Contract With Plaintiff.

On or about October 5, 1982 the defendant landlord signed an OHA inspection report approving plaintiff's apartment for continuation in the Section 8 Program. Then on October 7th, Mr. Gnessin signed an agreement with plaintiff entitled "Request for Lease Approval" which states:

> The undersigned Owner (Lessor) and Family (Lessee) hereby request the Orange Housing Authority to approve the lease for the dwelling unit located at 661 Lincoln Avenue - Apt. 307 for a term of twelve months beginning December 1, 1982.

In signing this agreement, defendant committed himself to entering a new lease agreement with plaintiff, subject to the OHA's approval. Having already inspected and approved plaintiff's apartment, OHA had no cause to deny the parties a new lease. However, the defendant landlord then notified the OHA that he had

changed his mind and no longer intended to renew plaintiff's lease. In doing so, defendants L & A Properties and Gnessin breached the contract entered with plaintiff Jones on October 7, 1982.

F. The Due Process Clause Of The Fourteenth Amendment To The United States Constitution Requires Good Cause For Nonrenewal Of A Section Lease, Notice Of The Reason For Non-Renewal, And An Opportunity To Be Heard.

Defendants' refusal to renew plaintiff's lease without good cause violates the due process clause of the Fourteenth Amendment to the United States Constitution. Swann v. Gastonia Housing Authority, supra, citing Goldberg v. Kelly, 397 U.S. 254 (1970). The Swann Court held that a tenant in the Section 8 program has a legitimate expectation that his tenancy will continue in the absence of good cause for eviction. See also, Jeffries v. Georgia Residential Finance Authority, supra.

"(T)he touchstone of due process is protection of the individual against arbitrary action of government". Wolff v. McDonell 418 U.S. 539, 558 (1974). The United States Supreme Court has repeatedly affirmed that due process requires notice and an opportunity to be heard before one can be deprived of a property right. Fuentes v. Shevin, 407 U.S. 67 (1972), Sniadach v. Family Finance Corp., 395 U.S. 337 (1969), Goldberg v. Kelly, supra. In terminating plaintiff's tenancy without good cause notice of the reason for termination or a hearing, the defendant

landlord violated her due process rights. In acquiescing in the defendant landlord's termination of plaintiff's tenancy, defendant's Orange Housing Authority and Lardiere have also violated plaintiff's due process rights.

POINT II

PLAINTIFFS WILL SUFFER IRREPARABLE HARM

If plaintiff's rent subsidy is not continued, she will be unable to pay the full rent for her apartment. If her rent is not paid, she faces imminent eviction proceedings by her landlord. The threat of eviction is particularly crucial in New Jersey where, as numerous courts have noted, there is an acute shortage of low income housing. See, Southern Burlington County N.A.A.C.P. v. Township of Mount Laurel, 67 N.J. 151 (1975); Marini v. Ireland, 56 N.J. 130 (1970); Reste Realty v. Cooper, 53 N.J. 444 (1961). Plaintiff will have difficulty in finding another home at a rent she can afford. Thus, plaintiff and her son face the disruption of their home and family life.

These circumstances constitute irreparable harm and require the grant of prliminary relief. In light of plaintiff's probable success on the merits, this harm is overwhelmingly sufficient to permit such relief.

POINT III

DEFENDANTS WILL NOT BE HARMED BY THE ISSUANCE OF PRELIMINARY RELIEF

The preliminary relief sought will not injure either the landlord or the OHA. The landlord will receive full rent for his

apartment while this action is pending. As recently as October 7, 1982, the landlord indicated that he was satisfied with plaintiff as a tenant. He decided not to sign a new lease with her only after she complained about lack of heat in her apartment. As plaintiff has been a satisfactory tenant and will continue to pay her rent, it seems clear that the defendant landlord cannot be harmed in any way by plaintiff's remaining in her apartment during the pendency of this matter.

Nor will the OHA be harmed by the grant of preliminary relief. The OHA receives funds to subsidize a certain number of rental units in the Section 8 program. Plaintiff fills one of those Section 8 positions. If the OHA does not continue to subsidize plaintiff's rent in her present apartment. They will either subsidize her rent in another apartment or give her Section 8 line to another tenant. There can be no harm to the OHA in continuing to assist plaintiff in her present apartment as they have done for the past year.

POINT IV

THE PUBLIC INTEREST WILL BE SERVED

The purpose of the Section 8 Existing Housing Program is to aid "lower-income families in obtaining a decent place to live..." 42 U.S.C. §1437f(a). The public interest in providing low-income housing and providing it in a fair and efficient manner weighs in favor of the issuance of preliminary relief. The preliminary relief sought by plaintiff will insure that the underlying

purpose of this program is not frustrated.

CONCLUSION

In view of plaintiff's probable success on the merits, the harm to plaintiff and the lack of injury to defendants, and the public interest, the weight of considerations more than satisfy the requirements necessary for preliminary relief. Wherefore plaintiff requests that this Court grant plaintiff preliminary relief pending a final decision in this action.

Respectfully Submitted,

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